

Approved as Written: 4/10/02

**CITY OF MORGAN HILL  
CITY COUNCIL SPECIAL MEETING  
WEDNESDAY, APRIL 3, 2002**

**CALL TO ORDER**

Mayor Kennedy called the meeting to order at 6:30 PM.

**ROLL CALL ATTENDANCE**

Present: Mayor Kennedy, Council Member Carr, Council Member Tate  
Late: Council Member Sellers, and Council Member Chang (arrived at 6:33 PM)

**DECLARATION OF POSTING OF AGENDA**

Office Assistant II Malone certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

***City Council and Redevelopment Agency Action***

**CLOSED SESSION:**

City Attorney Leichter announced closed session item 1.

1.

**CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**

Authority: Government Code Section 54956.9(a)

Name of Case: Kennedy v. Davis, Santa Clara County Superior Court; Case No. CV798941

**OPPORTUNITY FOR PUBLIC COMMENT**

Mayor Kennedy opened the Closed Session Items to public comment. There being no public comment, Mayor Kennedy closed public comment.

**ADJOURN TO CLOSED SESSION**

Mayor Kennedy adjourned the meeting to closed session at 6:32 P.M.

**RECONVENE**

Mayor Kennedy reconvened the meeting at 7:04 P.M.

### **CLOSED SESSION ANNOUNCEMENT**

City Attorney Leichter announced that there was no reportable action on the closed session item.

### **SILENT INVOCATION**

### **PLEDGE OF ALLEGIANCE**

Mayor Kennedy invited Mr. Paul Yokoi to lead the Pledge of Allegiance.

### **PUBLIC COMMENT**

Mayor Kennedy opened the floor to public comment on items not on the agenda. There being no public comment, Mayor Kennedy closed public comment.

### **OTHER BUSINESS:**

#### **1) REQUEST FROM MR. JAMES ALLIVATO TO CONTINUE THE APRIL 9, 2002 ABATEMENT APPEAL HEARING**

City Attorney Leichter stepped down from the dais.

City Manager Tewes informed the Council that Ms. Leichter is acting as counsel for the Community Development Department, and that Mr. Dan Siegal has been hired to serve as counsel for the City in this matter, as counsel for the appeal hearing.

City Manager Tewes related a brief history to the Council, and stated that in August 2001, a Notice of Nuisance was issued to Mr. Allivato for the property at 825 Llagas Road. The latest scheduled Code Enforcement Appeal hearing on this matter is scheduled for April 9, 2002. He informed the City Council that Mr. Allivato has requested that the April 9 hearing be postponed to a later date to allow him time to subpoena Ms. Tara Gauthier, an additional witness that he has just located. He reported that the Council has previously issued subpoenas to its witnesses, and a rescheduling of this hearing would require staff to re-issue subpoenas.

Mr. Tewes related the reason for Mr. Allivato's request is that he would like to have Ms. Gauthier appear in person. He has been advised by staff that Ms. Gauthier could participate in the hearing by telephone, but he wants her present to examine documents in person. Mr. Allivato believes that an extension would allow time for a subpoena to be issued to her.

Council Member Sellers asked if it would be possible to provide this witness with the documents

prior to April 9, so she could have them in front of her and be able to participate in the hearing on that date by telephone. He would like the hearing to be held on the 9<sup>th</sup>, with that provision. He suggested that these documents be sent to Ms. Gauthier by overnight mail.

Counsel Leichter stated that she has already spoken with Ms. Gauthier, and will be sending her exhibits for her preparation. If Mr. Allivato would identify what documents he wants to be sent to her, Ms. Leichter offered to include them in the packet she is sending. Ms. Leichter stated that she would object to any new documents being added, because all documents were required to be submitted previously.

City Manager Tewes offered to speak with Mr. Allivato to obtain clarification on what documents, contained within the current documents, Mr. Allivato would like to have sent to Ms. Gauthier.

Council Member Chang stated that she would like to have these documents sent to Ms. Gauthier, and whether Ms. Gauthier can be here in person or by telephone, that this hearing should take place as scheduled for April 9.

**Action:**        *On a motion by Council Member Sellers, seconded by Council Member Tate, the City Council unanimously (5-0) **confirmed** that the hearing remain as scheduled for April 9, and that Ms. Gauthier be provided with the documents from those already submitted that she needs to be able to testify by telephone, or in person, at that hearing.*

City Attorney Leichter returned to the dias.

## **ADJOURNMENT**

There being no further business, Mayor Kennedy adjourned the meeting at 7:38 PM.

**MINUTES RECORDED AND PREPARED BY:**

---

**MOIRA MALONE, OFFICE ASSISTANT II**